

Full Text of Question 2

“An Act Establishing A Sensible State Marihuana Policy”

St. 2008, c. 387

Be it enacted by the People, and by their authority as follows:

Section 1. This Act consists of five sections which together shall be known as "An Act Establishing A Sensible State Marihuana Policy."

Section 2. Chapter 94C of the General Laws is hereby amended by inserting therein a new Section 32L, making the possession of one ounce or less of marihuana punishable only by civil penalties and forfeiture. That new section shall read as follows:

Section 32L. Notwithstanding any general or special law to the contrary, possession of one ounce or less of marihuana shall only be a civil offense, subjecting an offender who is eighteen years of age or older to a civil penalty of one hundred dollars and forfeiture of the marihuana, but not to any other form of criminal or civil punishment or disqualification. An offender under the age of eighteen shall be subject to the same forfeiture and civil penalty provisions, provided he or she completes a drug awareness program which meets the criteria set forth in Section 32M of this Chapter. The parents or legal guardian of any offender under the age of eighteen shall be notified in accordance with Section 32N of this Chapter of the offense and the availability of a drug awareness program and community service option. If an offender under the age of eighteen fails within one year of the offense to complete both a drug awareness program and the required community service, the civil penalty may be increased pursuant to Section 32N of this Chapter to one thousand dollars and the offender and his or her parents shall be jointly and severally liable to pay that amount.

Except as specifically provided in "An Act Establishing A Sensible State Marihuana Policy," neither the Commonwealth nor any of its political subdivisions or their respective agencies, authorities or instrumentalities may impose any form of penalty, sanction or disqualification on an offender for possessing an ounce or less of marihuana. By way of illustration rather than limitation, possession of one ounce or less of marihuana shall not provide a basis to deny an offender student financial aid, public housing or any form of public financial assistance including unemployment benefits, to deny the right to operate a motor vehicle or to disqualify an offender from serving as a foster parent or adoptive parent. Information concerning the offense of possession of one ounce or less of marihuana shall not be deemed "criminal offender record information," "evaluative information," or "intelligence information" as those terms are defined in Section 167 of Chapter 6 of the General Laws and shall not be recorded in the Criminal Offender Record Information system.

As used herein, "possession of one ounce or less of marihuana" includes possession of one ounce or less of marihuana or tetrahydrocannabinol and having cannabinoids or cannabinoid metabolites in the urine, blood, saliva, sweat, hair, fingernails, toe nails or other tissue or fluid of the human body. Nothing contained herein shall be construed to repeal or modify existing laws, ordinances or bylaws, regulations, personnel practices or policies concerning the operation of motor vehicles or other actions taken while under the influence of marihuana or tetrahydrocannabinol, laws concerning the unlawful possession of prescription forms of marihuana or tetrahydrocannabinol such as Marinol, possession of more than one ounce of marihuana or tetrahydrocannabinol, or selling, manufacturing or trafficking in marihuana or tetrahydrocannabinol. Nothing contained herein shall prohibit a political subdivision of the Commonwealth from enacting ordinances or

bylaws regulating or prohibiting the consumption of marihuana or tetrahydrocannabinol in public places and providing for additional penalties for the public use of marihuana or tetrahydrocannabinol.

Section 3. Chapter 94C of the General Laws is further amended by inserting a new Section 32M emphasizing education concerning the effects of drug usage for youthful offenders. That new section shall read as follows:

Section 32M. An offender under the age of eighteen is required to complete a drug awareness program within one year of the offense for possession of one ounce or less of marihuana. In addition to the civil penalties authorized by Section 32L and 32N of this Chapter, the failure of such an offender to complete such a program may be a basis for delinquency proceedings for persons under the age of seventeen at the time of their offense. The drug awareness program must provide at least four hours of classroom instruction or group discussion and ten hours of community service. In addition to the programs and curricula it must establish and maintain pursuant to Section 7 of Chapter 18A of the General Laws, the bureau of educational services within the department of youth services or any successor to said bureau shall develop the drug awareness programs. The subject matter of such drug awareness programs shall be specific to the use and abuse of marihuana and other controlled substances with particular emphasis on early detection and prevention of abuse of substances.

Section 4. Chapter 94C is further amended by inserting a new Section 32N providing for enforcement of the sensible marihuana policy at the local level, utilizing the non-criminal disposition procedures specified in Section 21D of Chapter 40 of the General Laws, so far as apt. That new section shall read as follows:

Section 32N. The police department serving each political subdivision of the Commonwealth shall enforce Section 32L in a manner consistent with the non-criminal disposition provisions of Section 21D of Chapter 40 of the General Laws, as modified in this Section.

The person in charge of each such department shall direct the department's public safety officer or another appropriate member of the department to function as a liaison between the department and persons providing drug awareness programs pursuant to Section 32M of this Chapter and the Clerk-Magistrate's office of the District Court serving the political subdivision. The person in charge shall also issue books of non-criminal citation forms to the department's officers which conform with the provisions of this Section and Section 21D of Chapter 40 of the General Laws.

In addition to the notice requirements set forth in Section 21D of Chapter 40 of the General Laws, a second copy of the notice delivered to an offender under the age of eighteen shall be mailed or delivered to at least one of that offender's parents having custody of the offender, or, where there is no such person, to that offender's legal guardian at said parent or legal guardian's last known address. If an offender under the age of eighteen, a parent or legal guardian fails to file with the Clerk of the appropriate Court a certificate that the offender has completed a drug awareness program in accordance with Section 32M within one year of the relevant offense, the Clerk shall notify the offender, parent or guardian and the enforcing person who issued the original notice to the offender of a hearing to show cause why the civil penalty should not be increased to one thousand dollars. Factors to be considered in weighing cause shall be limited to financial capacity to pay any increase, the offender's ability to participate in a compliant drug awareness program and the availability of a suitable drug awareness program. Any civil penalties imposed under the provisions of "An Act Establishing A Sensible State Marihuana Policy" shall inure to the city or town where the offense occurred.

Section 5. Chapter 94C is further amended by amending its pre-existing penalty provision to conform to the sensible marihuana policy established by this Act. Section 34 of Chapter 94C as appearing in the 2006 official edition is amended by inserting after the word "Except" appearing in line 5 the words "as provided in

Section 32L of this Chapter or" and by inserting the words "more than one ounce of" before the word "marihuana" appearing in line 16.